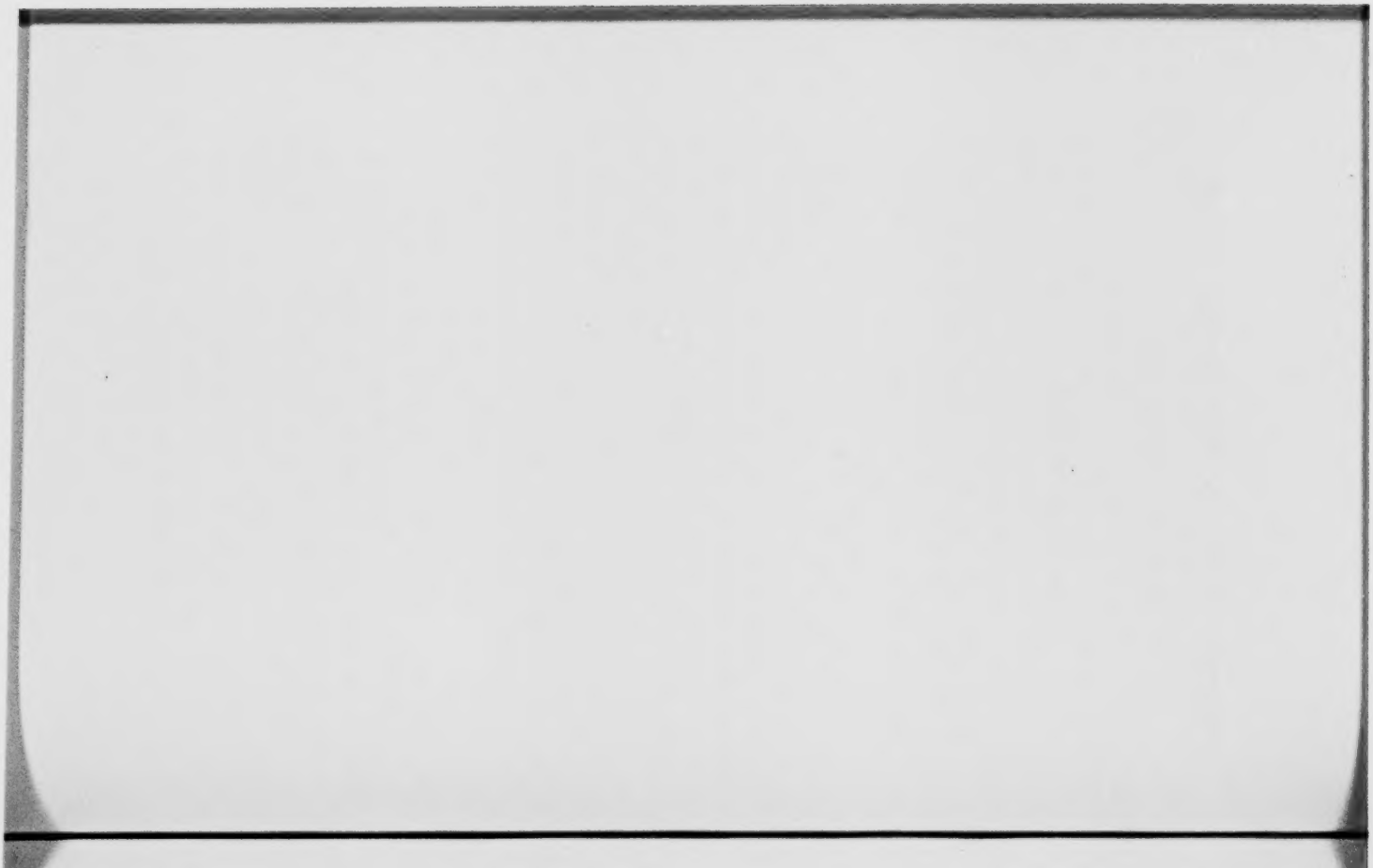

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 1268

HAMLET ICE COMPANY, INCORPORATED,
Petitioner,

vs.

PHILIP B. FLEMING, Administrator of the Wage and Hour Division, United States Department of Labor.

SUPPORTING BRIEF ON PETITION FOR WRIT OF CERTIORARI.

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1. The plaintiff prays for a writ of certiorari to review decision affirming decision of the Circuit Court of Appeals for the Fourth Circuit, which affirmed a judgment of the District Court for the Eastern District of North Carolina. The opinion of the Circuit Court of Appeals was decided April 13, 1942, not yet officially reported.

2. Jurisdiction of the Supreme Court of the United States is based on, and supported by, the following:

Judicial Code, Section 240, as amended 28 U. S. C. A., Section 347

The statute sought to be reviewed is the Fair Labor Standards Act 1938, 52 Stat. 1060, paragraphs 6, 7 and 11 (c), 29 U. S. C. A., paragraphs 206, 207 and 211 (c).

3. The judgment of the District Court was entered on the 9th day of September, 1941, and the opinion and judgment of the Circuit Court of Appeals upon consideration thereof was decided April 13, 1942.

4. The nature of the case arises out of the claim on the part of the Administrator of the Wage and Hour Division of the Fair Labor Standards Act of 1938 that the Hamlet Ice Company, petitioner, is subject to the provisions of this Act. The Ice Company denied that it was engaged in interstate commerce or the production of goods for interstate commerce and that, in any event the provision in the Fair Labor Standards Act of 1938, in Section 3 (i), provides, " 'Goods' means goods (including ships and marine equipment), wares, products, commodities, merchandise or articles or subjects of commerce of any character, or any part or ingredient thereof, but does not include goods after their delivery into the actual physical possession of the ultimate consumer thereof other than a producer, manufacturer, or processor thereof."

And the petitioner, defendant in the court below, contended that, since "goods" constitute a necessary part of commerce, and that under this Act the life of "goods" ended when they were delivered into the physical possession of the ultimate consumer thereof, which ultimate consumer was not a producer, a manufacturer or processor.

The determination of the limitation of interstate commerce, as well as the production of goods for interstate commerce under the terms of the Fair Labor Standards Act is involved. The District Court, which reversed the Master's holding, and the Circuit Court of Appeals for the Fourth Circuit held that the defendant petitioner was within the limits of the Fair Labor Standards Act of 1938.

The petitioner defendant denied these contentions and claimed that its activities were not in interstate commerce

and did not produce goods for interstate commerce as defined in the Fair Labor Standards Act.

5. Cases sustaining the unlimited jurisdiction of the Supreme Court of the United States to review cases determined in the Circuit Court of Appeals:

Warner v. *New Orleans*, 176 U. S. 474;
Title Guaranty & Surety Co. v. *U. S.*, 222 U. S. 401;
Ex Parte Chetwood, 165 U. S. 443;
United States v. *Gulf Refining Co.*, 268 U. S., 452.

6. Specification of Error Assigned:

(1) Is the petitioner (defendant below) engaged in interstate commerce or the production of goods for interstate commerce?

The error assigned is that the District Court and the Circuit Court of Appeals erroneously held that the defendant is engaged in interstate commerce and in the production of goods for interstate commerce.

7. Statement of Case.

The defendant manufactures ice, at Hamlet, North Carolina, and the sales relied on by the Administrator are made to Receivers of Seaboard Air Line Railway Company, Railway Express Company and Fruit Growers Express Company. Delivery of ice in 300-pound blocks is made at, and near to, defendant's plant. The Fruit Growers Express Company ice its cars and furnish refrigeration service to the Railway. The Railway Express Company uses its ice to refrigerate less than car-load lot shipments. The Railway Company uses ice in Pullman cars for drinking water purposes in cars and in its offices at Hamlet. The ice is consumed in the refrigeration service. Defendant petitioner says, upon this, that it is excluded from the provisions of the Fair Labor Standards Act of 1938 in that it

does not engage in interstate commerce and its goods are not produced for interstate commerce, but that its three customers are ultimate consumers thereof (R. 87-89, 91-95).

Argument.

Petitioner contends that it is not within the terms of the Fair Labor Standards Act, because its goods never go into commerce between the States and that no other person ships its goods in interstate commerce and that they are used and consumed in the use by the purchasers, for that the Fair Labor Standards Act, Section 3 (i), cuts off the flow of defendant's goods when they are delivered to the three named ultimate consumers. The House amendment, including "in any industry affecting commerce," was eliminated during the legislative birth of the Fair Labor Standards Act of 1938. The following authorities are relied on:

California Rice Industry v. *Federal Trade Commission,* 102 F. (2d) 716;

Carter v. *Carter Coal Co.,* 298 U. S. 238, 299, 317, 80 L. Ed. 1160;

Bunte Bros., Inc., v. *Federal Trade Commission,* 110 F. (2d) 412;

15 C. J. 2nd, page 298, paragraph 28;

Winslow, et al., v. *Federal Trade Commission,* 277 Fed. 206;

Hooper v. *California,* 155 U. S. 655, 39 L. Ed. 297;

Federal Trade Commission v. *Bunte Bros.,* 312 U. S. 349;

Jewel Tea Co. v. *Williams,* 118 F. (2d) 202, 206;

Puget Sound Stevedoring Co. v. *State Tax Commission,* 302 U. S. 90;

Williams v. *Feats,* 179 U. S. 270, 278;

Federal Compress Co. v. *McLean,* 291 U. S. 17, 21, 22;

Chassaniol v. *Greenwood,* 291 U. S. 584;

Eastern Air Transport, Inc., v. *South Carolina Tax Commission*, 285 U. S. 147;
Superior Oil Company v. *Miss.*, 280 U. S. 390;
U. S. v. *Southerland*, 9 Fed. Supp. 204;
Sou. Ry. Co. v. *Pitchford*, 253 Fed. 736;
Chicago, Etc., Co. v. *Harrington*, 241 U. S. 177;
Hopkins v. *United States*, 171 U. S. 578;
Schecter Bros. v. *U. S.*, 295 U. S. 495;
General Oil Co. v. *Crain*, 209 U. S. 211, 229;
Chicago, R. I. & P. R. Co. v. *Petroleum Ref. Co.*, 39 F. (2) 629.

The petitioner recognizes the granting of writs of certiorari is within the judicial discretion of this Court, but contends that the question is of sufficient importance and that there is no doubt as to the jurisdiction to grant the writ.

Respectfully submitted,

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Attorneys for Hamlet Ice Company, Inc.,
Petitioner.